

### **REMARKS**

The Examiner's indication that claims 13-16 and 33-38 will be rejoined if the elected claims are found to be allowable, has been noted with appreciation.

As pointed out on page 1 of the application, coated mica nacreous pigments, also known as pearlescent pigments, are well known. In the present invention, the mica which is coated is a synthetic mica with a particle size ranging from about 150 microns to about 1000 microns. Claim 1 has been amended to make the invention more clear without changing the scope of this claim, although it is believe the claim was sufficiently definite before this minor change. In light of this change, it is respectfully submitted that the asserted indefiniteness of claim 1 is moot.

With respect to claims 4-6 and 9-10, it is respectfully pointed out that the properties of gloss and whiteness are well known properties of nacreous pigments. Gloss is a measure of how shiny or reflective is a material. An incandescent light source is directed to the test specimen and a receptor is located at the mirror reflection at the incident beam. Measurements are made using a glossmeter such as the glossmeter recited in the incident application. There is an ASTM standard for measuring gloss. Whiteness, how closely a surface matches the properties of an ideal reflecting surface which neither absorbs nor transmit light but reflects it at equal intensities in all direction, is likewise well known. Commercially available test equipment for measuring whiteness are readily available, including the equipment specified in the instant application. Thus, gloss and whiteness are well known terms readily understood by those skilled in the art and it was not necessary to provide a detailed explanation of these terms in the application. As the Examiner is aware, the specification preferably omits aspects which are well known to those skilled in the art. In light of this consideration, it is respectfully submitted that claims 4-6 and 9-10 are definite.

Withdrawal of the rejection under 35 USC § 112, 2nd paragraph, is respectfully solicited.

The rejection of claims 1-12, 23, 24 and 26-32 under 35 USC § 102 over Fu is respectfully traversed.

The inclusion of claims 4-9, 27, 30 and 31 in this rejection is not understood as the Office Action admits the features of these claims are not present in Fu.

Fu relates to titanium dioxide coated substrate pearlescent pigments in general. It is desirable that the titanium dioxide be in the rutile crystalline form because rutile has a higher refractive index, stronger luster in color effects and higher outdoor weathering stability than other crystalline forms of the titanium dioxide. To achieve such a crystalline form, it was necessary to use either a tin or iron layer, as described in the opening paragraphs of the reference. Fu is based on the discovering that rutile layers could be obtained by depositing the titanium in a particular way. That titanium dioxide can be placed on any platelet substrate including natural or synthetic mica as well as other platelets. Natural mica having a particle size of 5-400 microns, more preferably 5-100 microns, and most preferably 5-50 microns is preferred. The working examples in this patent as showed the use of natural mica of either 10-50 microns or 5-15 microns. Fu thus teaches small size is preferable to large size. There is no disclosure in this patent of any cosmetic composition containing a coated mica nacreous pigment in which the mica is a synthetic mica having a particle size ranging from about 150 to about 500 microns. For example, there is no teaching of any cosmetic composition selected from the groups set forth in claim 26 of this application. Accordingly, a rejection based on § 102 is respectfully submitted not to be tenable.

The small natural micas, i.e., those less than about 150 microns and particle size, are generally used in the preparation of nacreous pigments. While synthetic mica has solved some of the visual and textural related problems associated with the coated natural micas, the small particle size synthetic micas were still deficient in gloss and brightness properties. They showed a tendency to exhibit an increase in opacity and reduced transparency, which hide the more desirable properties of the nacreous pigments such as glint and sparkle. The present invention is based, *inter alia*, on the discovery that improved transparency, superior gloss, glint and brightness, better compressibility and higher purity, as indicated by a higher degree of whiteness can be realized by employing a synthetic mica having a particle size of about 150 to 1000 microns as the substrate. Equivalent results are not achieved using large particle size natural micas, as demonstrated in the working examples. Also, better properties than the preferred small particle size natural mica of Fu are

realized. In example 1, mica having a particle size which range 150-750 microns with a mean particle size from 250 to 360 microns which was either natural (samples G-H) or synthetic (samples A-C) and natural or synthetic small size (25-95  $\mu\text{m}$  with a mean of 40-60  $\mu\text{m}$ )(samples D-F) are compared in the table. In all categories tested, the large particle size synthetic mica was superior to the corresponding large particle size natural mica and both the natural and synthetic small particle size mica. Likewise, the comparison tables in examples 3, 6, 9, 12, 16, 19 and 20 compared 150-750 micron synthetic micas (the "A" samples) with 20-95 micron synthetic micas (the "B" samples) and 150-750 micron natural mica (the "C" samples). Every case and in every parameter and tested, the large particle size synthetic mica was superior to the large particle size natural mica and small particle size synthetic mica. It is respectfully submitted that this superiority is surprising, unexpected and unpredictable. This is particularly true since Fu teaches that small is better than large and the finding that the opposite is true with synthetic mica is directly contrary to this reference. Therefore, no rejection under Section 103 based on Fu would be viable.

The rejection of claims 1-12, 23, 24 and 26-32 under 35 USC § 103 over Fu combined with Calello is also respectfully traversed.

The Fu patent has been discussed above. Calello is cited to show a lipstick which has gloss and shine and it is asserted that it would be obvious to one skilled in the art to modify that composition to use the mica coated substrate of Fu. However, as pointed out above, Fu teaches a preference for natural micas and that small is better than large, neither of which provide any basis for one skilled in the art to believe that the large particle size synthetic mica would provide better properties. At the top of page 6, the Examiner acknowledges that Fu fails to disclose coated synthetic mica having a gloss that leads to 40%. As previously pointed out, the large particle size synthetic mica gives better gloss, brightness, gleam, transparency and whiteness than large particle size natural mica or small size synthetic mica, and this result is surprising and unexpected. One skilled in the art would not predict that the incorporation of a synthetic mica would give any different gloss and shine properties than natural mica, would not predict that large is better than small, and would therefore would use natural mica of small particle size as recommend by Fu if

such a coated platelet was being incorporated into the Calello lipstick. The fact that better gloss can be achieved is surprising, unexpected, unpredictable and unobvious.

Claims 1-12, 17, 18, 23, 24 and 26-32 were rejected under 35 USC § 103 over Fu in view of Watanabe. In this rejection, the Examiner acknowledges that Fu fails to disclose a composition having an increased transparency of at least 10%. Watanabe is cited to teach a cosmetic composition and it is asserted that it would be obvious to modify the Fu composition to provide a color pigment with improved transparency, better gloss, clear color and improved stability because Watanabe teaches that a cosmetic composition containing one or more inorganic/organic particulates or colorants may provide transparent pigments of various colors having good transparency. However, the present invention is based on using the coated synthetic mica of large particle size to achieve the improved transparency, etc. rather than colorants. There is no teaching or suggestion in either Fu or Watanabe that a large particle size synthetic mica will achieve these results as opposed to a large particle size natural mica and indeed, Fu suggest the use of a small particle size natural mica and teaches that small is better than large. Clearly, therefore, the invention is surprising, unexpected, unpredictable and unobvious.

Claims 1, 18, 19 and 31 were rejected under 35 USC § 103 over Fu in view of Kimura. In this rejection, the Examiner acknowledges that Fu fails to disclose a composition in which a synthetic mica having an increased brightness of at least 5% is used, but states that a cosmetic composition having excellent properties is well known as shown by Kimura. Nothing in either reference teaches or suggests that the excellent properties achieved and can be realized by using a large particle size synthetic mica in place of a large particle size natural mica and indeed, Fu teaches that it is preferable to use small particle size natural mica as opposed to either the large particle size natural material or any synthetic mica and also that small particle size is better than large particle size. Fu thus teaches away from the present invention. Clearly the results achieved in the present application are surprising, unexpected, unpredictable and unobvious.

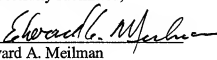
Claims 1, 21, 22 and 25 were rejected under 35 USC § 103 over Fu in view of Miyoshi. This rejection is respectfully traversed. In this rejection, the Office Action acknowledges that Fu

fails to disclose a composition with synthetic fluorphlogopite mica. Miyoshi is asserted to disclose a powder based on substrate particles such as synthetic fluorphlogopite mica coated with micronized metal oxide particles. Here also, there is no teaching or suggestion that the use of the use of the coated large particle size synthetic mica will provide surprising, unexpected, and unpredictable properties compared to the use of a coated small or large particle size natural mica. Once again, Fu's teaching that small is better than large would lead the skilled person away from the present invention. It is respectfully submitted that this rejection should also be withdrawn.

In view of all of the foregoing, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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